

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

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VICE CHANCELLOR

New Castle County CourtHouse
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Wilmington, Delaware 19801-3734

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Re: *In the Matter of Jacqueline B. Jones,*
Civil Miscellaneous No. 10320

Dear Counsel:

Before the Court are exceptions to the final accounting of a guardianship. Petitioner/Exceptant PNC Bank, Delaware ("PNC Bank") took exception to six aspects of the Final Accounting of the guardianship of Jacqueline B. Jones. The exceptions include the guardians' transfer of title to the ward's car to themselves during the guardianship, the guardians' changing of a beneficiary on an annuity funded by the ward and the guardians' failure to convert several accounts on which one of the guardians and the ward

were jointly named to guardianship property. The guardians, Arthur E. Caulk and M. Darlene Caulk, denied any wrongdoing.

These issues formed the basis of a two day hearing held on September 16 and October 7, 2005. Exceptant and the guardians submitted post-trial briefing and the Court heard argument on March 16, 2006. This letter opinion embodies the Court's post-hearing findings of fact and conclusions of law.

For the reasons set forth below, the Court concludes that the transfer of the ward's car constituted harmless error; that PNC Bank lacks standing to challenge the change in annuity beneficiary and that, in any event, the change was consistent with the Ward's intentions; and that the Caulks had no obligation to convert the challenged accounts to guardianship property but that they should have disclosed Mrs. Caulk's claimed interest in these accounts. Further, because the question of whether Mrs. Caulk was a joint owner with a right of survivorship, a tenant in common or named merely for the sake of convenience on the six accounts in issue was not squarely presented in this exception proceeding, the Court *sua sponte* will hold further proceedings to resolve that question pursuant to its statutory authority to ensure the proper administration of guardianships.

I. BACKGROUND

A. The Parties

PNC Bank is the executor of the estate of the late Jacqueline B. Jones (the “Ward”) and the trustee of the Ward’s Revocable Living Trust Agreement (the “Trust”).¹

By order of this Court, the Caulks became guardians of the person and property of the Ward on December 14, 2001.² The Ward died testate on February 29, 2004.³

B. The Relationship Between the Ward and the Caulks

Sometime before the death of James Jones, the Ward’s husband, in 1984, the Caulks and the Jones became friends and saw each other socially.⁴ On his deathbed, James Jones asked the Caulks to look after his wife.⁵ Over the next 20 years, the Caulks ate meals with the Ward at least once a week, took her shopping and to doctors’ appointments and helped with the upkeep of her house and property.⁶ At some point

¹ Pretrial Stip. & Order ¶ 2.B.

² *Id.* ¶ 2.A; PX 3.

³ RX 27.

⁴ Tr. at 174 (Mrs. Caulk) (testifying that she knew the Ward for over 40 years), 265–66 (Mr. Caulk) (testifying that he had known the Ward since at least the early 1980s and that he and his wife occasionally had dinner with the Joneses). Citations in this form (“Tr.”) are to the hearing transcript and indicate the page and, where it is not clear from the text, the witness testifying.

⁵ Tr. at 174 (Mrs. Caulk), 267 (Mr. Caulk).

⁶ Tr. at 175–76 (Mrs. Caulk), 267–68 (Mr. Caulk).

before the guardianship, the Ward added Mrs. Caulk's name to several bank accounts and certificates of deposit ("Jointly-Titled Accounts").⁷ In or about 2000, Mrs. Caulk began writing checks for the Ward because the latter's hands were deformed from arthritis.⁸

C. The Jointly-Titled Accounts

In an inventory of the guardianship assets filed pursuant to Court of Chancery Rule 110, the Caulks listed six bank accounts or certificates of deposit.⁹ The Caulks did not indicate that any of these accounts were jointly-titled in that filing or any subsequent filing with this Court before PNC Bank asserted its exceptions.¹⁰ Yet, when the Ward died Mrs. Caulk claimed to be a joint tenant with a right of survivorship of these six accounts.¹¹ Both of the Caulks testified that the Ward told them before the guardianship was established that "some day these [the Jointly-Titled Accounts] will be yours."¹²

⁷ Tr. at 209, 227 (Mrs. Caulk), 324 (Mr. Caulk).

⁸ Tr. at 176 (Mrs. Caulk).

⁹ RX 18 (Inventory) (listing among other assets a Wilmington Trust Checking Account, a Wilmington Trust Money Market Account, a PNC Bank Money Market Account, an E Trade Bank Money Market Account and two E Trade Bank Certificates of Deposit).

¹⁰ See RX 23 (First Account of Guardians); RX 28 (Final Account of Guardians); Tr. at 314–15 (Mr. Caulk).

¹¹ Tr. at 216 (Mrs. Caulk), 315–16 (Mr. Caulk).

¹² Tr. at 177, 227 (Mrs. Caulk), 324 (Mr. Caulk) (testifying that the Ward opened a joint account with Mrs. Caulk in 1997). A number of years earlier, the Ward

Based on that understanding, the Caulks closed the accounts shortly after the Ward died and retained in excess of \$200,000. The Caulks did not report that action contemporaneously or seek Court approval of it.

At the hearing, the Caulks proffered documents that show both the Ward's and Mrs. Caulk's name on five of the six accounts.¹³ None of these documents, however, explicitly indicate that the Ward and Mrs. Caulk held the accounts as joint tenants with a right of survivorship.

Pursuant to the order establishing the guardianship, the Caulks established a separate guardianship account into which they caused the Ward's social security and pension payments to be deposited.¹⁴ These payments constituted the Ward's income. After the Ward's death, the guardianship account passed to her estate.

established an annuity for the benefit of Mrs. Caulk. *See* RX 6 (Memorandum from the Ward to Mrs. Caulk) (Mar. 8, 1992) ("Keyport Insurance Annuity goes to my friend, Darlene Caulk").

¹³ RX 8 (E Trade Bank Certificate of Deposit) (showing "Jacqueline B. Jones or Darlene Caulk" in the Account Summary Section); RX 9 (same); RX 21 (PNC Bank Money Market Account Statement) (showing "Jacqueline Jones or Darlene Caulk" in the address field); RX 22 (Wilmington Trust statement showing both the Ward's and Mrs. Caulk's names in the address field).

¹⁴ RX 16 ¶ 6 (Final Order Appointing a Guardian of the Person and Property) ("The guardians shall establish one or more accounts at Wilmington Trust, said accounts to be titled 'Court of Chancery Guardianship of Jacqueline B. Jones, Arthur E. Caulk and M. Darlene Caulk, Guardians', and shall cause the income of the disabled person to be deposited therein."); PX 5.

D. The Ward Enters a Nursing Home and the Caulks Obtain a Guardianship

In early 2001, the Ward fell and required hospitalization. After a brief stay in an assisted living facility, she returned home and remained at home until May 2001. The Ward returned to an assisted living facility in June, but several falls forced her to move to a nursing home a few months later. She remained in the nursing home for the rest of her life.¹⁵

When the Ward entered the nursing home in 2001, a nurse there suggested that the Caulks obtain a guardianship over the Ward so that they would have access to her medical records and a voice in her medical care.¹⁶ In December 2001, the Caulks petitioned this Court to become guardians of the Ward's person and property. Both the Ward and her estranged daughter, Jackie Jo Jones,¹⁷ consented to the Caulks' petition. In fact, in response to her attorney *ad litem*'s inquiry as to whether she trusted the Caulks to be appointed guardians, the Ward responded that "they have been her friends for many

¹⁵ Tr. at 185, 207–08 (Mrs. Caulk).

¹⁶ Tr. at 271–72 (Mr. Caulk). Once the Ward entered a nursing home permanently, the Trust, pursuant to its terms, began to provide for the Ward's maintenance. Tr. at 387–88 (Davis). When the Trust began paying for the Ward's maintenance, its principal was \$1,192,059.34; when the Ward died, the Trust principal was \$1,175,750.58. RX 11; RX 29.

¹⁷ PX 15. The Ward and her daughter have been estranged since before James Jones's death in 1984; they did not see each other or speak after the Ward's husband's funeral. Tr. at 158 (Jackie Jo Jones). Jackie Jo Jones is the principal beneficiary of the Trust. PX 2 at 11.

years and that she trusts them completely.”¹⁸ On December 14, 2001, this Court appointed the Caulks guardians of the person and property of Jacqueline B. Jones, the Ward.

E. The Ward Gives her Car to the Caulks

While she was in the nursing home, the Ward told the Caulks to use her car to visit her because she wished to see the car.¹⁹ In 2003, the Ward decided that she was unlikely to drive her car again and gave it to Mrs. Caulk.²⁰ Mrs. Caulk obtained the title to the car from the Ward’s safe deposit box and had the Ward sign it to authorize the transfer.²¹ Several weeks later, the Ward signed a writing that reads, “On May 3, 2003, I, Jacqueline B. Jones, signed the title to my 1996 Lexus ES 300 giving the car to my friend M. Darlene Caulk. My signature was witnessed by Debbie Kardine.”²² Deborah

¹⁸ PX 14 ¶ 6.

¹⁹ Tr. at 186 (Mrs. Caulk), 290–91 (Mr. Caulk).

²⁰ Tr. at 186 (Mrs. Caulk) (testifying that the Ward said “I don’t think I’m going to ever be able to drive this car again. . . . I’m going to give it you now.”), 292 (Mr. Caulk) (testifying that the Ward told him “I gave the car to Darlene now rather than wait until after I pass away.”) Mrs. Caulk would have received the car at the Ward’s death pursuant to a specific bequest contained in the Ward’s Will and related memoranda. PX 2 ¶¶ II.A, II.B; RX 10.

²¹ Tr. at 186–87 (Mrs. Caulk).

²² RX 25.

Kardine, the nursing home business office manager, witnessed the Ward sign that writing.

In the weeks between the signing of the title and the writing witnessed by Kardine, the Ward spoke with Kardine several times about the transfer of the car. During these conversations, the Ward asked Kardine to witness a document and told her that she planned to give her car to Mrs. Caulk because “I’ll never use it again.”²³ Kardine also testified that the Ward told her that Mrs. Caulk was “a very dear friend of mine” and that “I would like her to have [my car]. She’s my family.”²⁴

F. The Ward Changes the Beneficiary on an Annuity

In March 1990, the Ward purchased an annuity from The Hartford that named her two sisters as beneficiaries (“Hartford Annuity”).²⁵ The sisters were to take under the annuity upon the Ward’s death; in the event one died before the Ward, the instrument provided that the surviving sister would take the entire annuity. In a May 1998 memorandum to Mrs. Caulk (“1998 Memorandum”), the Ward reminded Mrs. Caulk of the existence of the annuity and its beneficiaries.²⁶

²³ Tr. at 135–36 (Kardine).

²⁴ Tr. at 136.

²⁵ RX 5.

²⁶ RX 10. The Caulks had taken the Ward to Legg Mason to purchase the annuity in 1990. Tr. at 282–83 (Mr. Caulk). The 1998 Memorandum did not mention what was to occur if a beneficiary predeceased the Ward.

In April 2002, one of the beneficiaries of the Hartford Annuity died.²⁷ Mr. Caulk believed that created a “void” in the annuity and directed his wife to ask the Ward who she wanted to name as a beneficiary in place of her late sister.²⁸ Mr. Caulk testified that he did not see the Hartford Annuity document that provided for the surviving sister to take the entire annuity until after the Ward died.²⁹ Mrs. Caulk, accompanied by her daughter Diane Wollaston, subsequently asked the Ward how she wanted to deal with the so-called void in the annuity on three separate occasions.³⁰ On the first occasion, Mrs. Caulk specifically asked the Ward if she wanted her deceased sister’s share to go to the children of that sister or the surviving sister or the Trust. But, the first time, like each subsequent time, the Ward responded that she wanted her late sister’s share to go to Mrs. Caulk.³¹ Although this testimony was self-serving, the Court finds it credible based on its observation of the witnesses and review of the relevant exhibits.

²⁷ Tr. at 190 (Mrs. Caulk).

²⁸ Tr. at 280 (Mr. Caulk).

²⁹ Tr. at 283.

³⁰ Tr. at 190–92 (Mrs. Caulk), 236–40 (Wollaston).

³¹ Tr. at 190–92 (Mrs. Caulk), 236–40 (Wollaston). Wollaston testified that the Ward became upset when she and Mrs. Caulk asked her about the Hartford Annuity a third time and said, “I’ve already told you, I want your mother to have it.” Tr. at 239.

After the Ward indicated for the third time that she wanted Mrs. Caulk to receive one half of the Hartford Annuity, the Caulks obtained a change of beneficiary form, filled it out and had the Ward sign it.³² The Caulks also arranged for Legg Mason to guarantee the Ward's signature.³³

G. The Caulks Ask the Trust to Return \$35,000 to One of the Ward's Bank Accounts

Before the Caulks obtained a guardianship over the Ward's person and property, PNC Bank occasionally would ask the Ward if it could take money from her checking account and transfer it to the Trust so that it might earn a greater rate of return.³⁴ In October 2002, while the guardianship was in effect, PNC Bank transferred \$35,000 from the Ward's checking account into the Trust for that purpose, but did so without the consent of the Ward or the Caulks.³⁵ When the Caulks learned of the transfer, Mr. Caulk contacted PNC Bank and asked it to return the money to the checking account because the Caulks believed they "were responsible for that \$35,000. It was in the guardianship, and we had -- we were responsible for it, and I thought that [Davis] should put the money

³² Tr. at 283–86 (Mr. Caulk).

³³ Tr. at 286 (Mr. Caulk); RX 20.

³⁴ Tr. at 26–27 (Davis). Donald Davis, a trust officer at PNC Bank and the administrator of the Trust, testified for Exceptant.

³⁵ Tr. at 26–27, 35 (Davis).

back.”³⁶ PNC Bank conceded that it had transferred the money without authorization and promptly returned it to the Ward’s checking account.³⁷

H. Relief Sought by Exceptant

PNC Bank asks this Court to void the Ward’s *inter vivos* transfer of the title to her car to Mrs. Caulk, to void the Ward’s change of beneficiary on the Hartford Annuity, to hold that the guardians are estopped from claiming an interest in the Jointly-Titled Accounts because they did so only after the Ward died and, consequently, to order the return of the funds from those accounts to the Ward’s estate. In the alternative, Exceptant argues that, if the Court rejects its last argument and concludes that Mrs. Caulk was a joint tenant with a right of survivorship, then the guardianship commissions the Caulks

³⁶ Tr. at 297.

³⁷ Tr. at 37 (Davis). At the time, Davis did not know Mrs. Caulk claimed a joint interest in that account. In light of that interest, Mr. Caulk’s action benefited him and his wife at least as much as the Ward.

took should be reduced accordingly.³⁸ Finally, Exceptant asks for an award of its attorneys' fees.³⁹

II. ANALYSIS

A. The *Inter Vivos* Transfer of the Car Constituted Harmless Error

The Ward's Will directed her executor "to distribute those items of my tangible personal property as shall be listed in any written memoranda that I may leave attached to my will or among my valuable papers to the designated beneficiary thereof"⁴⁰ In the 1998 Memorandum, the Ward indicated that her "1996 Lexus Automobile" shall go to Mrs. Caulk.⁴¹ Thus, if the Ward had not transferred title to her car to Mrs. Caulk in May 2003, Mrs. Caulk presumably would have received title to the car upon the Ward's death in February 2004.

³⁸ Under Court of Chancery Rule 132, guardians are entitled to commissions based in part on the size of the guardianship estate. The Caulks took commissions as if 100% of the Jointly-Titled Accounts belonged to the guardianship estate. Exceptant contends that a conclusion that the accounts were joint accounts with a right of survivorship, or even that the Ward and Mrs. Caulk held the accounts as tenants in common, would reduce the size of the guardianship estate and, correspondingly, the amount of commissions to which the Caulks were entitled.

³⁹ PNC Bank waived one of its original six exceptions. Exceptant's Post-Trial Reply Mem. at 8 (waiving exception number five (guardian's failure to account for the sale of the Ward's personal property)).

⁴⁰ RX 3 ¶ II.A.

⁴¹ RX 10.

PNC Bank argues that pursuant to 12 *Del. C.* § 3901(h)⁴² the Ward lacked the capacity to transfer her car to Mrs. Caulk.⁴³ In the circumstances of this case, the Court need not determine whether the Exceptant's interpretation of Delaware law is correct because the *inter vivos* transfer of the Ward's car constituted harmless error. PNC Bank did not show how the transfer of the car ten months before it would have occurred pursuant to the Ward's Will harmed the Ward's estate or the Trust. Voiding the transfer would thus be a useless exercise in formalism because the car still would belong to Mrs. Caulk.

Furthermore, the evidence shows that the Ward knew what she was doing and intended the car to go to Mrs. Caulk when it did. Although the more appropriate practice in this situation definitely would have been for the Caulks to request permission from the Court to accept the gift of the car, the Court is satisfied that the Ward's intent was effectuated and that the Caulks did not unduly influence the Ward or intentionally evade Court review.

⁴² Section 3901(h) provides that "[f]rom the time of the Court's decree appointing a guardian of the property, the disabled person shall be under disability to contract with regard to the property forming the subject matter of the guardianship during the pendency thereof." It is unclear whether "contract" as it is used in this statute encompasses the Ward's gift of her car to Mrs. Caulk. Assuming for the sake of argument that it does, the Court still would conclude that the gift constituted harmless error because the evidence shows that the Ward wanted Mrs. Caulk to have the car and had the capacity to make that determination.

⁴³ Exceptant's Post-Trial Mem. ("EOB") at 6.

B. PNC Bank Lacks Standing to Challenge the Change of Beneficiary on the Hartford Annuity

Standing is a “threshold question” that this Court must affirmatively answer to ensure that each distinct portion of the litigation before it presents a “case or controversy” appropriate for the exercise of the Court’s judicial powers.⁴⁴ The issue of standing is concerned “only with the question of *who* is entitled to mount a legal challenge and not with the merits of the subject matter of the controversy.”⁴⁵

In order to have standing, Exceptant

must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) there must be a causal connection between the injury and the conduct complained of . . . and (3) it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.⁴⁶

“This Court will not render an opinion on behalf of a ‘mere intermeddler;’ to obtain relief a party must have a legally cognizable interest in a controversy.”⁴⁷

⁴⁴ See *Dover Historical Soc’y v. City of Dover Planning Comm’n*, 838 A.2d 1103, 1110 (Del. 2003).

⁴⁵ *Stuart Kingston, Inc. v. Robinson*, 596 A.2d 1378, 1382 (Del. 1991) (internal citations omitted).

⁴⁶ *Dover Historical Soc’y*, 838 A.2d at 1110 (internal citations omitted).

⁴⁷ *Tunnell v. Stokely*, 2006 WL 452780, at *2 (Del. Ch. Feb. 15, 2006) (quoting *Stuart Kingston*, 596 A.2d at 1382).

Exceptant PNC Bank, as a representative of the Ward's estate and the Trust, has not suffered an injury in fact as a result of the change of beneficiary on the Hartford Annuity. PNC Bank argues that the Caulks improperly induced the Ward to add Mrs. Caulk as a beneficiary on the annuity. Based on the evidence, the Court finds that but for the inquiries by the Caulks, the Ward would not have modified the beneficiaries of the Hartford Annuity. If the Ward had not changed the beneficiary, the Ward's surviving sister would have received the entire annuity. Thus, it is the surviving sister and her family who purportedly have suffered an injury, not the Ward's estate or the Trust.⁴⁸ The proceeds of the Hartford Annuity were not part of the Ward's estate or the Trust and would not and did not pass through them.⁴⁹ As such, PNC Bank lacks standing to challenge the change of beneficiary.⁵⁰

⁴⁸ Notably, neither the surviving sister nor her family has objected to Mrs. Caulk's sharing in the proceeds of the Hartford Annuity.

⁴⁹ *Estate of Necastro*, 1991 WL 29958 (Del. Ch. Feb. 28, 1991), and *In re Estate of Magness*, 1992 WL 187629 (Del. Ch. July 21, 1992), do not compel a different result. In those cases, then Vice Chancellor Berger held that a beneficiary of a residuary trust had standing to file exceptions to accounts of an executor pursuant to 12 *Del. C.* § 2302(d). That statute provides that "any beneficiary entitled to share in the distribution of the estate" who has not waived such right may file exceptions. Although no such provision exists in the guardianship laws, the Court assumes for purposes of argument that this Court's precedent in the will context would apply in the guardianship context, as well. The Court's decision in *Necastro* turned on the fact that "the beneficiaries of [a] trust are the real parties in interest [as opposed to the trustee] and constitute persons entitled to a share of the estate." 1991 WL 29958, at *1 (internal quotation and citation omitted). Here, it is unquestioned that PNC Bank, as executor of the Ward's estate and trustee of the

Although Exceptant lacks standing to challenge the change of beneficiary, the Court, as the ultimate fiduciary of the Ward, may inquire into a guardian's behavior, at least where, as here, the challenged transaction is self-interested.⁵¹ Having carefully considered the evidence, the Court is convinced that the Caulks acted in good faith and that the Ward knowingly and intentionally added Mrs. Caulk as a beneficiary on the Hartford Annuity. Thus, although the guardians should have sought Court permission

Trust, represents a person entitled to a share of the estate, *i.e.*, Jackie Jo Jones. The Ward's Will provides that the residuary of her estate is to pass to the Trust; Jackie Jo Jones is the sole beneficiary of the Trust. Jackie Jo Jones does not, however, have any legally cognizable interest in the Hartford Annuity, a contractual relationship that exists outside of the Ward's estate and the Trust.

⁵⁰ See *In re Laird*, 1998 WL 409165, at *4 (Del. Ch. July 8, 1998) (concluding that petitioner lacked standing to question the handling of certain trusts because neither she nor her children were beneficiaries).

⁵¹ See *Boisvert v. Harrington*, 796 A.2d 1101, 1106 (Vt. 2002) ("In this, as in most states, the probate court essentially exercises a continuing jurisdiction over both the guardian and the ward Indeed, in appointing a guardian *the court* assumes the primary responsibility to protect the minor or others who are unable to care for themselves. 'In reality the court is the guardian; an individual who is given that title is merely an agent or arm of that tribunal in carrying out its sacred responsibility.'") (emphasis in original) (quoting *Kicherer v. Kicherer*, 400 A.2d 1097, 1100 (Md. 1979)); *Seaboard Sur. Co. v. Boney*, 761 A.2d 985, 992 (Md. App. 2000) ("Lest sight be lost of the fact, we remind all concerned that a court of equity assumes jurisdiction in guardianship matters to protect those who, because of illness or other disability, are unable to care for themselves. *In reality the court is the guardian; an individual who is given that title is merely an agent or arm of that tribunal in carrying out its sacred responsibility.*") (emphasis in original) (internal quotation omitted).

before helping the Ward make this change, the Court declines to afford relief to Exceptant for this aspect of its exceptions.

C. The Jointly-Titled Accounts

1. The Caulks failure to convert or disclose

PNC Bank argues that the Caulks had an obligation to convert the Jointly-Titled Accounts to guardianship property. Alternatively, Exceptant argues that, at the very least, the Caulks had an obligation to disclose their interest in the accounts so that interested parties could challenge the Caulks' assertion while the Ward was alive. In essence, Exceptant's latter argument is one for equitable estoppel: because the Caulks did not claim an interest in the accounts in any of their filings with this Court, they are estopped from doing so now. The Caulks deny the existence of either an obligation to convert the accounts to guardianship property or to disclose their interest in them. Instead the Caulks contend that converting the Jointly-Titled Accounts would have deprived them of their interest in the accounts and contravened the Ward's estate planning.

PNC Bank has cited no statute or court rule that requires conversion of accounts jointly held by a ward and a guardian before the establishment of a guardianship into guardianship property or even disclosure of such joint interests by a guardian.⁵²

⁵² PNC Bank argues that the Caulks knew or should have known that they were required to title the Jointly-Titled Accounts in the guardianship name based on the Delaware Handbook for Guardians (the "Handbook"). EOB at 2. The Handbook,

Likewise, the Court has found no such Delaware statute or court rule. Consequently, this exception is suspect as a legal matter. Exceptant's estoppel argument also must fail because Exceptant did not lack the means of discovering Mrs. Caulk's interest.⁵³ In fact, one of the Jointly-Titled Accounts was maintained at PNC Bank.⁵⁴

As a fiduciary and an equitable matter, however, a guardian who claims an interest in an asset in which the ward also has a material interest should disclose that interest promptly.⁵⁵ Although the Court finds that the Caulks' failure to disclose Mrs. Caulk's

however, does not clearly reflect such a requirement. Moreover, the cover of the Handbook contains the following disclaimer: "This handbook is for informational purposes only. It is not a substitute for legal advice which can only be given by an attorney." PX 13. The Caulks did have the assistance of an attorney in filing their petition for guardianship, the Inventory, First Accounting and Final Accounting. Tr. at 199 (Mrs. Caulk).

⁵³ See Donald J. Wolfe, Jr. & Michael A. Pittenger, *Corporate & Commercial Practice in the Delaware Court of Chancery* § 11-1 at 11-2 (2005) (listing elements of equitable estoppel).

⁵⁴ Exceptant was also on notice of a possible joint interest when the guardians failed to close the Jointly-Titled Accounts and deposit the funds into the guardianship account by the time the Caulks filed the Inventory and later their First Accounting, more than one year after they were appointed.

⁵⁵ See *SunTrust Bank Middle Ga. N.A. v. Harper*, 551 S.E.2d 419, 426 (Ga. App. 2001) (noting that the duty of loyalty requires guardians to disclose any interest held jointly with a ward at the initiation of the guardianship); cf. *In re Adler*, 2003 WL 22053309, at *3 (Pa. Com. Pl. Mar. 19, 2003) ("[L]egal authority suggests that courts watch with great jealousy transactions of guardians with their wards or any dealings between them affecting the estates of wards. The equitable rule concerning dealings between guardian and ward is very stringent. The relation is so intimate . . . that any transaction between the two parties . . . through which the

alleged ownership interest in the challenged accounts was inadvertent, they still acted inconsistently with the fiduciary nature of their relationship to the Ward. In addition to the duties set out by statute and court rules, guardians owe common law fiduciary duties to the wards they undertake to represent and the Court for whom they act as agents.

The Caulks were less than candid with the Court here. The plain language of the Caulks' three filings with this Court — the Inventory (January 15, 2002), the First Accounting (February 24, 2003) and the Final Accounting (June 21, 2004) — indicates that the Jointly-Titled Accounts belonged solely to the Ward.

Had they acted in accordance with their duties, the Caulks would have disclosed Mrs. Caulk's interest in the Jointly-Titled Accounts in the original inventory they filed pursuant to Rule 110. If the Caulks had provided such disclosure, interested parties could have challenged Mrs. Caulk's claim and the Court could have entertained those challenges and decided how to handle the joint accounts for purposes of the guardianship.⁵⁶

guardian obtains a benefit . . . are, in the highest sense, suspicious and presumptively fraudulent.”).

⁵⁶ This facet of this case suggests that a salutary prophylactic purpose might be served by revising this Court's guardianship rules to make explicit the importance of full disclosure in connection with assets held jointly by a ward and her guardian, especially when, as here, the guardian has no familial relation to the ward.

For whatever reason, PNC Bank elected not to argue in this action that the Jointly-Titled Accounts were mere convenience accounts until it conclusorily suggested that possibility in its opening post-trial brief.⁵⁷ Without notice that the Exceptant intended to dispute the nature of Mrs. Caulk's claimed joint interest, the Caulks did not proffer much evidence of Mrs. Caulk's joint ownership of the disputed accounts. Instead, the Caulks argued that they were not required to disclose that the accounts were jointly-owned or convert them to guardianship accounts and that, to the extent Exceptant belatedly sought to challenge Mrs. Caulk's interest, any such challenge was untimely. A challenge by Exceptant to Mrs. Caulk's alleged interest may in fact be untimely, but the Court, again as the Ward's fiduciary, may challenge that interest *sua sponte*.⁵⁸

⁵⁷ EOB at 4 ("Furthermore, it is clear that the accounts in question were convenience accounts, set up by [the Ward] only so that the Caulks could assist her with her financial affairs.").

⁵⁸ *See supra* n.51.

Because of the way the parties litigated this case,⁵⁹ the Court does not have the record necessary to make a determination as to whether Mrs. Caulk and the Ward were joint tenants with a right of survivorship or tenants in common or whether Mrs. Caulk was on the challenged accounts solely as a matter of convenience. The Court considers such a determination important to the proper administration of this guardianship. Accordingly, a future hearing on that issue is necessary.⁶⁰ With the benefit of such a hearing and further briefing, the Court will be able to make a more informed judgment on whether the Jointly-Titled Accounts were truly jointly owned, including such subsidiary issues as who has the burden of proof on that issue and what the appropriate standard is for purposes of this case.

⁵⁹ In its pretrial memorandum, Exceptant stated that the “evidence will show that in the initial guardianship proceedings, the Caulks failed to disclose to the court that the decedent owned several bank accounts in joint names with them.” Exceptant’s Pretrial Mem. at 1. Similarly, in its list of exceptions, Exceptant asserted that the “guardians failed to convert several accounts in which they were joint owners to the guardianship registration.” Notably, Exceptant did not challenge the guardians’ alleged interest in the Jointly-Titled Accounts in either of these documents or at any time before the hearing in this matter. Consequently, the record created thus far is incomplete in terms of what the precise nature of Mrs. Caulk’s interest was, if any, in those accounts.

⁶⁰ To the extent it still remains in dispute, the Court also will decide in that context whether the Caulks properly calculated their commissions as guardians.

D. Exceptant's Attorneys' Fees

In Delaware, "parties bear their own attorneys' fees pursuant to the American Rule."⁶¹ Although exceptions to this rule exist in equity, including for bad faith conduct in litigation, Exceptant has not shown that any such exception applies here.

III. CONCLUSION

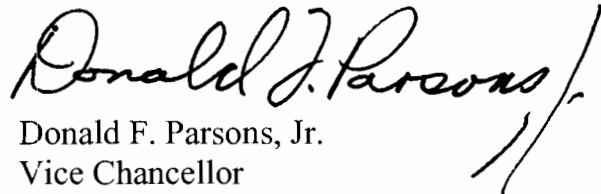
For the reasons stated, the Court concludes that the *inter vivos* transfer of the Ward's car to Mrs. Caulk constituted harmless error, that PNC Bank lacks standing to challenge the change of beneficiary on the Hartford Annuity and, in any event, the change comported with the Ward's intent, and that although the Caulks had no obligation to convert the Jointly-Titled Accounts to guardianship property, they did have a duty to disclose Mrs. Caulk's claimed interest in those accounts to the Court. Based on the Caulks' failure to comply with that duty, the Court has concluded in the unusual substantive and procedural circumstances of this case that it must conduct a further hearing to determine what, if any, ownership interests the Caulks had in the Jointly-Titled Accounts and, depending on the answer to those questions, whether any further relief is required. In addition, Exceptant's claim for attorneys' fees is denied. Therefore, the Court enters judgment in favor of the Caulks and against PNC Bank on all but the exceptions pertaining to the Jointly-Titled Accounts and the Caulks' commissions.

⁶¹ *Carlson v. Hallinan*, 2006 WL 771722, at *22 (Del. Ch. Mar. 21, 2006) (internal citations omitted).

The Court will hold a telephone conference on Friday, August 4 at 10:00 a.m. to determine a schedule for the remaining proceedings. Exceptant's counsel shall arrange the call.

IT IS SO ORDERED.

Sincerely,


Donald F. Parsons, Jr.
Vice Chancellor

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